

File 28/07/20.

IN THE LAND COURT OF TONGA  
NUKU'ALOFA REGISTRY

LA 5 of 2019

**BETWEEN :** SCHUMWAY MATAELE

- Plaintiff

**AND :** 1. 'ULUAKI 'O VAIOLA MANU

2. PRINCE TUPOUTO'A

3. MINISTER OF LANDS

- Defendants

**BEFORE HON. JUSTICE NIU AND ASSESSOR TU'IFUA**

**Counsel :** Mr Viliami Latu for plaintiff  
Mr Siosifa Tu'utafaiva for first defendant  
Mr Sione Taione for second defendant  
Mr Sione Sisifa for third defendant

**Trial :** 26 and 27 May 2020

**Submissions :** by Mr Taione filed 22 June 2020  
by Mr Latu filed 29 June 2020

**Ruling :** 24 July 2020.

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## RULING

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### Plaintiff's claim

[1] The plaintiff claims that a tax allotment (lot 92) (of 8 <sup>1</sup>/<sub>4</sub> acres) in the estate of the Crown Prince Tupouto'a at 'Utulau had lawfully been granted to him by the Minister of Lands (third defendant) in 2016 with the consent of the estateholder, Tupouto'a, (second defendant) and the Minister subsequently and unlawfully granted it, with the subsequent consent of the estateholder,

to the first defendant instead. He prays for orders that the grant made to the first defendant is cancelled and that the grant already made to him be registered and that a deed of grant in his name be issued to him instead.

#### **Defence of first defendant**

- [2] The first defendant says that this tax allotment had been given to him by the estateholder in 1971 and that he has been cultivating it as his tax allotment until he applied for grant of it, with the consent of the estateholder in 2018, and the Minister of Lands lawfully granted it to him and issued to him his deed of grant. He says that the plaintiff's application was in error because the lot that the plaintiff should have applied for was lot 90, and furthermore, lot 92 was being cultivated by him at the time that the plaintiff made his application in 2015.

#### **Defence of second defendant**

- [3] The second defendant says that he had consented to the grant of the tax allotment to the plaintiff upon his understanding that there was no one already farming and cultivating the tax allotment, and that when he was informed that the first defendant was farming and cultivating the tax allotment at the time that the plaintiff was asking him to consent to the grant of the allotment to him, he thereupon agreed to the grant of the allotment to the first defendant, and not to the plaintiff.

#### **Defence of the third defendant**

- [4] The third defendant says that (subsequent to his approval of the plaintiff's application) he conducted an investigation of the land in dispute and found out that the first defendant was currently farming the land and that the plaintiff was informed of it and that the land he had applied for was not available to be granted to him.

#### **Evidence of the plaintiff**

- [5] The plaintiff gave evidence by way of a written brief of evidence and oral evidence on which he was cross-examined by all 3 defendant counsel.

- [6] He said that he was the second eldest of the legitimate sons of one named Malakai Tokuolava Mataele but commonly called Hameti Mataele, but that because the eldest son, Peni, had been taken and fostered by Hawaiians in Hawaii, he was then the heir to Hameti Mataele's land. He said that Hameti Mataele did make him the heir by giving him the land which had been gifted to him by the then Crown Prince Tupouto'a at his estate of 'Utulau. He said that he had gone and lived in the US in 1984 and after Hameti died he then came to Tonga to register the land in his name in 2015.
- [7] He said that he had never seen the land before he applied for it. He said that he went to the Minister of Lands and the Minister told him to see his secretary, 'Ana Hu'ahulu, to fill in his application form. He said that 'Ana Hu'ahulu filled in his form. He said that she told him to go upstairs to the surveyors to get the correct number of the lot of the tax allotment which his father had been granted by Tupouto'a so that she could complete filling in his form. He said that he went upstairs and one of the officers upstairs was a man from 'Utulau and that he said that he knew the lot which Hameti Mataele had farmed and that he gave him the lot number of that lot and he brought it down to 'Ana and that 'Ana completed his form and that he signed it. That lot was no.92.
- [8] He said that he then took his application form to the Palace Office to a girl there named Le'ota and was told to come back after 2 weeks. He said he then spoke with Ve'ehala as a result of which he went back to Le'ota and told her to give back his application form so that he would take it to the Crown Prince estateholder himself. He said that Le'ota then told him that she would go with him and so they went to the residence Liukava the same day. He said that the Crown Prince asked him whether he intended to return to Tonga and that he told him yes. He said that the Crown Prince then said that he was happy to give him the land and he signed the form. He said that he and Le'ota then came and lodged the form at the Land Office.

[9] He said he then went and looked at the tax allotment. He said that people in 'Utulau showed him the tax allotment. It was in accordance with the copy of the map which he was given by the surveyors at the Land Office, namely lot 92. He said that the tax allotment was overgrown with bush and there were no crops on it. He was asked and he could not recall whether he went with the girl Le'ota and looked at the land. He described how he followed the map – he travelled westward along Liku Road, then turned left on a road and travelled southward towards the sea, then turned left again on a track and went eastward and the tax allotment was the second on his right. He was asked and he said he could not recall if there were Chinese workers working on a vegetable garden in the first tax allotment on his right as he went eastward.

[10] He said that he returned to the US but kept inquiring with the Land Office as to his registration of the tax allotment and they kept telling him that they were still working on it. He said he then came to Tonga in January 2017 and went and inquired at the Land Office but was told that they still working on it.

[11] He was shown a note which was written by a Land Officer, Fataua Halatanu, on 14 December 2017, which stated as follows:

“Note: talked with Schumway today 14.12.17 and clarified the land is presently farmed by others. Their allotment is part of the land leased by Fred Sevele. He will go and relook at resolving what has happened.”

He said that he did not know the officer who wrote the note but that he was in Tonga at that time and that his lawyer wrote to the Land Office in January 2019 and that he only knew for the first time in May 2019 at the formal proof of his present claim that the first defendant had also applied for the same tax allotment on 22 September 2015, and that he was surprised to also find out that the third defendant had granted the tax allotment he had applied for to

the first defendant on 8 August 2018, whilst he was still awaiting the advice from the Land Office about the registration of the tax allotment in his name.

### **Evidence of first defendant**

- [12] The first defendant stated in his evidence that he was granted this land as his by the estateholder in 1971 and that he kept and farmed it from then up to now. He said that in 2015 he farmed the whole tax allotment with manioke and that he harvested it in September 2016 and shipped it to his children in New Zealand to sell it there.
- [13] He stated that he knew the tax allotment which the plaintiff's father, Hameti Mataele, had farmed at Utulāu. He said that that allotment was a different allotment from the one that was given to him (the first defendant). He pointed it out on the map as the lot no.90. (That lot is presently leased by Fred Sevele, lease no.3847, from 3 March 1982 to 2 March 2032).
- [14] He said that he had asked the present king whilst he was still Crown Prince and estateholder that he register the tax allotment in his name and he was told to just keep the allotment as his and his descendants and then have it registered later on. He said that he then went to have it registered in 2015. He said that he went to the Palace Office to an officer there named Suka who directed him to go and fill in an application form and to give it to him to take to the estateholder. He said that Suka told him that there was already an application which had been made for the same tax allotment. He said that he did fill in an application form for the allotment and that he gave it to the officer, Suka, on 28 August 2015.
- [15] He said that he waited for advice from the Palace Office about his application but no advice came in 2015, 2016 and 2017. So he went to the estateholder himself, and that the estateholder told him not to worry and that he was going on his education and that he would look at his application on his return.
- [16] He said that he finally received advice from the Palace Office in 2018 and that he then went and got his application from there and that it was already

signed by the estateholder. He said he took it to the land office and he was told to pay the survey fee which he paid on 30 January 2018 in the sum of \$80.50. He said that later on he was told to pay the registration fee of \$8.05 and that he paid it on 3 August 2018 and that he then received his deed of grant Book 452 Folio 16 on the same day.

[17] He said that Hameti Mataele farmed lot 90 in 1981 or 1982 and that he farmed it for may be 5 years before he left it in bush and that it was subsequently fenced up by Fred Sevele as a cow paddock.

[18] He said that he had the whole tax allotment (lot 92) ploughed up and planted ~~with manioke in October 2014~~ and that he harvested it in November 2016. He said that when the plaintiff applied for this tax allotment lot 92 on 10 July 2015, the whole allotment was already farmed with his manioke crop.

[19] He said that he was told that someone from the Land Office came and inspected the tax allotment after he had applied for it.

[20] He said that his application form was filled in by an officer at the Palace Office and that he did not know who had written in lot 92 on his form.

[21] He said that in 2015 the lot of Fred Sevele (no.93) next door to him (no.92) was farmed by Chinese with vegetables.

[22] He said that there were 4 people from 'Utulau working in the Land Office: Teu ki Mo'unga, Filipe Nau, Seli Taufa and Sione Leki. He said that Henoa Tupou and Sione Leki both worked in the Survey Office for over 10 years.

[23] He said that Sione Leki was his 'nephew' because Sione Leki's father was his first cousin, their fathers being brothers.

[24] He said that Sione Leki did not help him with his application for the tax allotment.

**Second defendant evidence.**

[25] The evidence for the second defendant was given by Tiulipe Le'ota. She said that before the present king had his Coronation in 2015, the plaintiff came to

the Palace Office and inquired how he would register a tax allotment at 'Utulau. She said she asked him how he was connected to the land and that he said that it had been given by the previous King to his father, Hameti Mataele, and that he was coming to have it registered in his name. She said she told him to go to the land office and see if the land was still available and if so, to have his application form filled in by them with the correct lot of the tax allotment.

[26] She said that the plaintiff did that and he returned to her with the completed application form. She said that they then went to the Crown Prince at Liukava and that she explained the matter to His Highness and that he agreed to the application and signed it and that she then signed as witness. form showed that those signatures were done on 10 July 2015.

[27] She said that they (she and the plaintiff) went to the Land Office the following day with the form and had the survey fee paid, and that they then went to 'Utulau and saw the tax allotment applied for. She said that the tax allotment was covered in bush. She said that next to the tax allotment was a vegetable garden on which Chinese people were working at the time.

[28] She said that later on, a letter came from the Land Office to her to say that the land that the plaintiff had applied for were land belonging to other people, and that she informed the plaintiff of it.

[29] She said that it is true that she had signed as witness to the Crown Prince's signature on 22 September 2015 on the application form of the first defendant for the same lot 92, but that she did not know who had brought that application over to the Palace Office, and that she had only signed it as witness because she knew the Crown Prince's signature. She thought that the form could have been given by the Crown Prince's Matapule at 'Utulau, Tau'atevalu, directly to the Crown Prince. She also said that at that time, there was an officer working at the Palace Office named Suka Mangisi.

[30] It was put to her in cross-examination by Mr Tu'utafaiva and by Mr Latu that the plaintiff did not recall that he had gone with her to see the land, but she

maintained that she did go with him and that they had located the correct allotment lot no.92 from the map that she said the plaintiff had with him.

[31] I also asked her and she described how they had turned left from Liku Road and travelled southward towards the sea and then turned left again and went eastward and lot no.92 was on the right side, next to and after the vegetable garden where the Chinese people were working.

### **Third defendant evidence**

[32] The evidence for the third defendant was given by the Registrar of Lands, Semisi Moala, who has worked in the Land Office for 30 years. He said that in ~~last 2012, they received a letter from Hameti Mataele stating that Crown Prince Tupouto'a had told his matapule, To'a Malikini, to go with him and survey his allotment and to have it in his name, and that he wanted that allotment to be given to his son, the plaintiff. He said they also received another letter dated 8 July 2013 from him about the same thing and stating his correct name was Malakai Tokuolava Mataele and that he wished that the allotment be transferred to his son, the plaintiff.~~

[33] He said that on 30 September 2016, the second defendant issued a ministerial savingram in which he directed that a deed of grant of the plaintiff be prepared for lot no.92 in block no.77/89. It described that this was the lot which the estateholder had intended for Hameti Mataele but that Hameti Mataele had agreed on 8 July 2013 to give it to his son the plaintiff, and that the estateholder had now agreed to that by endorsing the plaintiff's application on 10 July 2015. It also confirmed that the plaintiff had paid the survey fees on 14 July 2015. He directed that the deed be prepared and that when it was ready, it was to be brought to him to be registered.

[34] He said that the second defendant had issued that savingram as a result of a brief which had been given to him recommending that he sign and issue the said ministerial savingram. He said that the Minister signed both his approval of the recommendation and the ministerial savingram on the same day, 30 September 2016.

[35] He said that a deed of grant was prepared in accordance with those directions with the name of the plaintiff already written on it and with lot no.92 written and a plan of it drawn on the deed, and that the deed had the book no, no.436 and the folio (page) no. of that book, page 72, entered into the deed.

[36] He also produced in Court book no.436 and it had the deed of grant of the plaintiff in it as page 72. Everything in it was complete except the blanks for the signature of the Minister and for the date of signing it. But the deed had 2 lines running diagonally across it with the word "CANCEL" written in between the two lines and it was signed by the chief draftsman, Sione Leki, and he had written the date of cancelling as 7 February 2017.

[37] He said that there was no Ministerial direction given for that cancellation.

[38] He said that the first record that the first defendant's application was received by the Land Office was a note made by Seli Taufu on the first defendant's application on 3 February 2017 to Fataua Halatanu to action the application.

[39] He also confirmed that the note at the bottom of the first defendant's application was written and signed by Sione Leki. It read (in Tongan):

"Note: This allotment was allocated to this man, 'Uluaki-'o-Vaiola Manu and he presently keeps and farms this allotment.

S.Leki

28/08/15."

[40] He said that on 27 October 2017, Seli Taufu, wrote (for the Secretary of Lands) to Tiulupe Le'ota of the Office of the Lord Chamberlain of the Palace Office and informed her that the estateholder had approved both the applications of the plaintiff and of the first defendant for the same tax allotment, lot 92. He said that Seli Taufu told her that an inspection had been carried out and it was discovered that the allotment was the first defendant's and that he was presently farming it as his allotment. Seli Taufu told her that

the lot which the plaintiff should have applied for was lot 90 and not lot 92. Seli Taufa then went on to ask Tiulupe to ask the estateholder to cancel the application of the plaintiff in order that they could proceed to make the grant to the first defendant.

[41] He said that in pursuance of that request, the second defendant estateholder wrote to the third defendant, Minister, on 25 December 2017 and asked him to proceed and make the grant of the allotment lot 92 to the first defendant and to hold the application of the plaintiff until he would return from overseas in December of the following year 2018.

~~[42] He said that the survey fee of the first defendant was paid on 30 January 2018 and that the third defendant signed his approval of a recommendation made in a brief to him to grant the allotment lot 92 to the first defendant on 19 May 2018. He said that the Minister signed the ministerial savingram directing the preparation of the deed of grant of the first defendant on 12 July 2018, and which also directed that his previous direction to prepare the deed of grant of the plaintiff for the same lot be cancelled.~~

[43] He said that the deed of grant book 452 folio 16 was prepared for the first defendant and it was for lot 92.

[44] That deed of grant of the first defendant was registered by the third defendant Minister of Lands on 4 August 2018.

[45] When he was cross-examined by Mr Tu'utafaiva, he said that the map that they used had been drawn in between 1966 and 1974 and that neither lot 90 or 92 had any name written it.

[46] He also said that because there was no indication on either the brief re the application of the plaintiff or the brief re the application of the first defendant that a site inspection had been carried out, it meant that no such inspection had been carried out in respect of each application.

[47] When he was cross-examined by Mr Latu, he said that no letter was written to the plaintiff to inform him that there was a problem with his application

(because of the first defendant's application for the same lot 92). He said that he believed that the allocations of the tax allotment of the estate of 'Utulau were done between 1966 and 1974 and that the names of the people to whom allocations were made were written onto the map, and that these lots, including lot 92, were not allocated and were free to be allocated by the estateholder later. He said that lot 92 was vacant and that the estateholder allocated it to the plaintiff.

[48] He said that it was Sione Leki's handwriting which had filled in the application form of the first defendant. He said that Sione Leki has worked in the surveyor's office from 1985 up to now.

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[49] He said that the plaintiff had complied with and completed all the requirements for the registration and grant of the tax allotment lot 92 to him as his tax allotment. He also said that they have not sent to the plaintiff any letter that his application has been cancelled.

[50] When he was re-examined by Mr. Sisifa, he said that the reason that he says that there was no inspection carried out was because there should have been a report of the inspection done, and that he had looked for it and had not found any such report.

### **Issues**

[51] Issues to be addressed in the submissions of the parties were discussed with all counsel in order that they would address them in those submissions. Mr. Taione and Mr. Latu filed their submissions but Mr. Tu'utafaiva and Mr. Sisifa did not file theirs.

### **Was lot 92 being farmed by first defendant when plaintiff applied for it?**

[52] I think that the main and critical issue is whether or not the first defendant was farming or cultivating lot 92 at the time that the plaintiff applied to have it granted to him as his tax allotment. In fact, that is the basis of the claim of the plaintiff and of the defence of all the defendants. The plaintiff says it was

not farmed at all, it was in bush. The defendants say it was being farmed and that it was completely cropped with manioke at the time.

[53] The plaintiff stated in his evidence that the allotment, lot 92, as indicated on the map which he had been given by the officers at the survey office (which map is the one contained in P.1 of the Third Defendants Production of Documents) was overgrown with bush and it had no crops at all when he went and looked at it after he had lodged his application with the Land Office on or about the date the Crown Prince signed his application form. That date was the 10 July 2015 as is shown on his application form on P.7 of the same Production.

~~[54] He said that people at 'Utulau showed him that lot, as the lot that his father, Hameti Mataele, had farmed there.~~

[55] His evidence is supported by the evidence of Tiulipe Le'ota, the only witness for the second defendant. She said that she went with the plaintiff to the tax allotment after the plaintiff's application was lodged at the Land Office. It is true that the plaintiff could not recall if he had gone with Tiulipe Le'ota to see the allotment, but Tiulipe Le'ota was certain that she went with him. I see no reason to doubt her evidence, considering that she was giving evidence as witness for the second defendant, estate holder. I also found her evidence convincing because she could recall that there was a vegetable garden in the first lot on the right and next door to the allotment and that Chinese people were working on it, which again, the plaintiff did not recall.

[56] Tiulipe Le'ota said that the allotment, lot 92, for which the plaintiff was applying was covered with bush and it had no crops.

[57] She also said, and I accept, that she had gone with the plaintiff to make sure that the land applied for was not being used or occupied by anyone else. I take that to mean that if she had found that the land was being used by anyone she would have had to report the matter back to the estate holder to sort out. But because there was no sign of anyone using or occupying the land, she was satisfied and she allowed the plaintiff's application to proceed.

[58] On the other hand, the evidence for the first defendant was that he signed his application on 28 August 2015 (some 45 days after the 14 July 2015 when the plaintiff paid his \$80.50 survey fees to the Land Office).

[59] The witness for the third defendant Minister of Lands, Semisi Moala, confirmed in his evidence that the head draftsman of the Surveyor Office at the Land Office, Sione Leki, had filled in the first defendant's application himself and had written in lot 92 as the lot that was applied for. He also, confirmed that Sione Leki wrote the note at the bottom of the application which stated:

"Note: This allotment was allocated to this man, 'Uluaki-o-Vaiola Manu and he presently keeps and farms this allotment.

S. Leki

28/08/15."

[60] I accept that evidence of Semisi Moala because he is familiar with and he recognises Sione Leki's handwriting and signature, he and Sione Leki having worked at the Land Office at least since 1990 when he started, as he stated in his evidence.

[61] If Sione Leki had filled in the first defendant's application, then why did the first defendant say in his brief of evidence that he himself filled in his application and signed it and gave it to Suka at the Palace Office? Especially after Sione Leki had written and signed the note I have stated above, on the same day of his application, "28/08/15"? I can only conclude that he does not want this Court to know that Sione Leki had anything to do with his application.

[62] That is supported by his evidence that he found out that there was someone else who was applying for the same allotment from the Palace Officer, Suka. No evidence was given as to how Suka would have known that it was lot 92 that the plaintiff had applied for, so that he could give that information to the first defendant. It is more likely, and I conclude that it was the case, that

Sione Leki found out at the Land Office that the plaintiff had applied for lot 92 and had told the first defendant, who was, and is, his "nephew" and they lived in the same village, 'Utulau, where this tax allotment is situated.

[63] I find that the first defendant was not being truthful when he was asked if Sione Leki had helped him with his application and he replied that Sione Leki did not, because Sione Leki had filled in his application form and had written the note at the bottom of it.

[64] But what is more glaring is his present claim that at the time the plaintiff applied for lot 92, lot 92 was already being kept and farmed by him, as Sione Leki had written in that note on the first defendant's application. ~~If lot 92 was being farmed, there would have been crops and sign of occupation there~~ which would have been easily verified upon inspection. And if the Minister of Lands was informed of it straight away, an inspection would have been directed and the crops of the first defendant would have been verified.

[65] I also consider the evidence of the first defendant that he had planted the whole tax allotment with manioke in October 2014 which he said he harvested in November 2016 and shipped to his children in New Zealand unconvincing. If there was such a large crop of manioke, neither the plaintiff nor Tiulipe Le'ota would have missed it when they visited the allotment in July 2015. But they did not see any such large plantation of manioke. They saw only overgrown bush on the allotment.

[66] I consider that if the manioke had in fact been planted in October 2014 like the first defendant says he planted it, the manioke would have matured and should have been harvested, as all manioke should be harvested, as soon as they attain 12 months, otherwise they would be over mature. No manioke crop, especially for sale, is left to grow over 12 months old. However, according to the first defendant, his manioke went to 25 months (from October 2014 to November 2016), before he harvested it. That is an unreasonable, and unbelievable thing for any farmer to do, especially, to sell at an overseas market. I frankly do not believe his evidence.

[67] What I believe he did, if he did at all, because there was not and there is not any report of such crop, he planted his manioke crop on lot 92 in September 2015 by ploughing up all the overgrown bush and planting the whole allotment with manioke to prove that he was farming the land and that that crop of manioke was harvested like he said in November 2016.

[68] I think that that was why there was no complaint lodged with the Minister or with the estate holder in July 2015 when the first defendant, or rather, Sione Leki found out that the plaintiff had applied for lot 92. There were no crops on lot 92 then. There was only bush there as the plaintiff and Tiulipe Le'ota said in their evidence. The crop was then subsequently planted in September 2015.

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[69] Accordingly, I find as a fact that there were no crops or farming or occupation of lot 92 by any person at the time that the plaintiff applied for it on 10 July 2015.

**Did the Minister of Lands grant lot 92 to the plaintiff?**

[70] The next issue is whether or not the third defendant Minister of Lands granted the tax allotment, lot 92, to the plaintiff. For a grant to be made, that is validly made, the following must be satisfied:

- (a) The applicant must be a Tongan subject by birth.
- (b) He must be male and 16 years of age or over.
- (c) He must have no allotment of the same kind he applies for.
- (d) He must apply on the prescribed form.
- (e) The form must have the signed consent of the estate holder, if it is not Crown land.
- (f) The land applied for must be available to be granted, that is, it is not occupied or farmed by another person.
- (g) The survey fee is paid, and
- (h) The Minister has consented to the grant to be made.

[71] Those are all and only requirements which the Courts have held that are required by the Land Act to be satisfied and a valid grant is held to have

been made: *Folau v Taione & Others* (2016) LA6/2015 (18 April 2016) Land Court.

[72] In the present case, the plaintiff had already satisfied all the 7 requirements (a) to (g) and the Minister satisfied the 8<sup>th</sup> requirement (h), by directing on 30 September 2016 that a deed of grant be prepared to be registered for grant to the plaintiff. On that day, the grant of lot 92 was validly made to the plaintiff.

[73] As a further evidence of that grant, the deed of the plaintiff was drawn up and prepared and completed with all the particulars of the plaintiff's name, and with a map of lot 92 drawn thereon leaving blank only the date and signature of the Minister to be completed by the Minister.

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[74] It was also already registered because the deed was already bound up in the register book no.436 as page (folio) no. 72 of that book, although the registration fee had not yet been paid by the plaintiff. But that was only because the plaintiff had not been informed to pay it, because the Minister had not as yet signed and dated the deed.

[75] I am satisfied that the plaintiff had done all the requirements which the Land Act required of him to do and the only remaining act was for the Minister to sign and date the deed.

[76] I am satisfied that that was the situation well before that deed of grant of the plaintiff was purportedly cancelled by Sione Leki on 7 February 2017, which was some 4 days after the first defendant's application for the same lot 92, which had been filled in by Sione Leki, was received by the Land Office for the first time on 3 February 2017.

**Was the cancellation of the plaintiff's grant lawful?**

[77] I have said that the cancellation of the grant made to the plaintiff was purportedly cancelled because the Courts have held that no grant can be cancelled by any person except the Land Court. Neither the Minister, nor any person or officer such as Sione Leki, the head draftsman, has any authority

to cancel any grant lawfully made: *Sete v Palu & anors* [2015] Tonga LR 296.

[78] It is also the case that the cancellation was unlawful because it was made in breach of natural justice, that is, it was done by Sione Leki on 7 February 2017 as aforesaid, and by the Minister on 12 July 2018 by his direction in his ministerial savingram that day to cancel the plaintiff's deed of grant, without the plaintiff having been given an opportunity of being heard in his defence of the grant which had been made to him.

[79] Mr. Taione for the second defendant agrees with that. He correctly refers to the case of *Hakeai v Minister of Lands* [1996] Tonga LR, 142 and the statement of the Court therein at p.143.

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[80] I also find that there was a breach of natural justice when Seli Taufau wrote to the second defendant estate holder in an official correspondence representing the Ministry of Land of the third defendant and asked the estateholder to cancel the plaintiff's application and to proceed with the first defendant's application. The third defendant thereby breached natural justice because he did not give the plaintiff any opportunity of being heard in his defence of his application.

[81] That breach resulted in the change of mind of the second defendant estate holder and his cancellation of his consent which he had given to the plaintiff without the plaintiff having had a say in the matter. That was breach of natural justice.

[82] Mr. Taione submits that the plaintiff was afforded an opportunity of being heard when he was informed by the land officer, Fataua Halatanu, on 14 December 2017 when he talked with the plaintiff on that day and Fataua Halatanu then wrote the note on the letter of Ministerial Savingram of 30 September 2016 (which directed that the deed of grant of the plaintiff be prepared for registration) as follows:

"Note: Talked with Schumway today 14.12.17 and clarified the land is presently farmed by others. Their allotment is part of the land leased by Fred Sevele. He will go and relook at resolving what has happened."

(P.13 of the Production).

[83] I am afraid that that note grossly misrepresented the situation at the time. It did not disclose that the first defendant had applied for the same lot 92 or that a letter had been sent to the Palace Office to seek the cancellation of his (the plaintiff's) application. It did not even invite the plaintiff to see the Minister or make representation to the Minister. I do not accept that it afforded the plaintiff the opportunity which natural justice required that he be given.

[84] Accordingly, I find that the cancellation of the plaintiff's grant and of his application for the grant were both unlawful.

**Did the plaintiff wrongly applied for lot 92?**

[85] The first defendant claims and gave evidence that the lot which the plaintiff should have applied for was lot 90 because that was the lot which his father, Hameti Mataele had farmed for some 5 years from 1982 or so and which Fred Sevele subsequently fenced up as a cow paddock.

[86] That evidence conflicts with the direction which the man from 'Utulau up in the surveyor office, (which was that the lot which Hameti Mataele farmed was lot 92) gave to the plaintiff as the lot that he was inquiring about to write in his application form, and with the direction which people in 'Utulau gave to the plaintiff when he went to see lot 92.

[87] And more importantly, lot 90 was already leased by Fred Sevele on 3 March 1982 (until 2 March 2032). So it could not have been farmed by Hameti Mataele in 1982 or so as the first defendant now claims.

[88] I am therefore not satisfied that the plaintiff wrongly applied for lot 92. I am satisfied that he correctly applied for lot 92.

## Conclusion

[89] Accordingly, I am satisfied and I find that the plaintiff has already been lawfully granted lot 92 as his tax allotment when the Minister of Lands gave his direction on 30 September 2016 that the deed of grant of the plaintiff be prepared for registration, and that that grant was unlawfully cancelled. I make the following orders:

- (a) The third defendant Minister of Lands shall forth cancel the deed of grant Book 452 Folio 16 in the name of the first defendant, 'Uluaki-o-Vaiola Manu, and to cause a new deed of grant to be prepared and to be dated and signed by him forthwith to replace the cancelled deed of grant of the plaintiff, Schumway Mataele, and to have it registered according to law.
- (b) The third defendant Minister of Lands shall pay the costs of the plaintiff these proceedings to be taxed if not agreed. I make no order for costs in respect of the other defendants.

Nuku'alofa: 24 July 2020



  
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J U D G E